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The President's Page

By AUGUSTUS F. MACK, JR.
President, Los Angeles Bar Association

President Gus Mack

THERE is nothing like a "pat on the back" for a job well done. Financial reward oft times follows success in a given field, but the genuine approbation and acclaim of one's fellows is the most gratifying pinnacle of all.

William P. Gray did a magnificent job as President in the year just concluded. He gave of himself without stint to all phases of the Association and its activities. He never hesitated to advance a view in which he believed. His committees worked diligently and well and their accomplishments are a matter of record. He had an outstanding year.

The retiring Trustees likewise put their shoulders to the wheel. They attended the weekly meetings—and special ones on occasion—faithfully, served on many special committees, and did the variety of tasks assigned. There was often warm debate and divergence of views on important problems, but always a reasonable and fair solution. Our retiring Trustees are William A. C. Roethke, George R. Larwill, J. Stanley Mullin, Albert Lee Stephens, Jr., Robert B. Campbell, Carlton H. Casjens, Joseph L. Wyatt, Jr.

Our sincere thanks and full appreciation go to Bill Gray for his spendid work and accomplishments as President, and his devo-

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SECOND ANNUAL

CRUISE TO HAWAII

Sponsored by the Los Angeles Bar Association

The Los Angeles Bar Association's HAWAIIAN CRUISE COMMITTEE has announced that the Association is sponsoring the second annual tour to Hawaii, for association members and guests.

"Ask those who went last year."

The cruise this year sails August 5, 1957, on the S.S. Lurline. Early reservations are recommended in order to secure choice space.

The Kelso Travel Bureau, 380 E. Green St., Pasadena, RYan 1-5151, is in charge of the official arrangements.

Arthur G. Bowman, 433 So. Spring St., Los Angeles 13, MAdison 6-2411, is the Los Angeles Bar Association's Hawaiian Cruise chairman and can be contacted for additional details.

Issue Editor—Carlos G. Stratton

Should Judges Be Subject to Disciplinary Action?

By the HON. THOS. P. WHITE,
Presiding Justice, District Court of Appeal

Hon. Thos. P. White*

TO ME the subject of this discussion might appropriately be entitled, "Why Should Judges Not Be Subject to Disciplinary Action?" because, after all, the Judicial branch is but one of the three departments of government, and like the Executive and Legislative branches of government, judicial office is a public trust and judges are not the masters but the servants of the people.

In a decision rendered by the Supreme Court of the United States (Bridges v. State of California, 314 U.S. 252, 289; 62 Sup. Ct. 190, 206; 86 L. Ed. 192, 217) Mr. Justice Frankfurter had this to say:

*Thomas P. White, Presiding Justice, District Court of Appeal, Second Appellate District, Division One, was born in Los Angeles, and graduated from the Univ. of Southern California, in 1911, with the degree of LL.B.

While pursuing his legal studies at the University of Southern California, Justice White was very active in student affairs. He served as President of the student body during his senior year, and for two years represented the College of Law of the University on its debating teams, against Cornell University, and the University of Washington.

Upon his graduation from the University of Southern California, Justice White immediately launched upon an independent career in the practice of law, associating himself with the firm of Randall, Bartlett & White, and later with Irwin, White & Rosecrans, both well known in Southern California.

Justice White's first judicial office came to him in 1913, when he was named by the Board of Supervisors to the position of Judge of the Police Court of Los Angeles. At the conclusion of his term as judge of the police court he returned to the practice of law, at which he continued until 1931, when he was appointed by the late Governor Rolph as a Judge of the Superior Court of Los Angeles County.

The Judicial Council assigned Justice White during his term as Judge of the Superior Court, to sit for some 15 months as a Justice Pro Tem. of the District Court of Appeal; and in 1937, when a vacancy occurred on that court, he was named as an Associate Justice. In March, 1949, Justice White was appointed by Governor Warren as Presiding Justice of Division One of the District Court of Appeal, where he is now serving.

During his judicial career, Justice White has found time to be extremely active in civic affairs, and has served as Vice-President of the Board of Directors of the Boy Scouts of America. He has served as a teacher in the College of Law of Loyola University, which institution honored him with the degree of Doctor of Laws. He is also a member of the Board of Directors of the Los Angeles Area Community Chest.

While serving as a judge of the police court he established and successfully conducted the Women's Court, and set up for the first time in the history of the City of Los Angeles a probation system in the inferior courts. The Big Sister League established by him and the Industrial Home for Women are still functioning in Los Angeles.

He is now a member of the Judicial Council of the State of California. The above article was an address given before the Legislation and Administration of Justice Section of Town Hall.

"Judges as persons, or courts as institutions, are entitled to no greater immunity from criticism than other persons or institutions. Just because the holders of judicial office are identified with the interests of justice they may forget their common human frailties, and fallibilities. There have sometimes been martinets upon the bench as there have also been pompous wielders of authority who have used the paraphernalia of power in support of what they have called their dignity. Therefore judges must be kept mindful of their limitations and of their ultimate public responsibility by a vigorous stream of criticism expressed with candor however blunt."

That independence of the judiciary is of the utmost importance in our judicial system no on will deny. And that because of its importance no restraints that would endanger that independence should be imposed. While this independence of the judiciary should be zealously guarded, the People are entitled to a weapon with which to combat an abuse of this independence when used as a cloak for continuing in office to the detriment of the best interests of the People. It should always be borne in mind that judicial officers are invested with tremendous power—they pass upon the lives and liberty, to say nothing of the property of our people. While their conduct should be above reproach, they should also be physically and mentally fit to discharge the great responsibilities of their high and important office. There is an old saying that, "He best governs who first learns to live in subjection."

NOT REVOLUTIONARY

There is nothing particularly new or revolutionary in this proposal to establish a forum for the removal or retirement of judges. What the present proposal of the Judicial Council attempts to do is to supplant the present cumbersome sytsem with an adequate and workable provision dealing with the removal or retirement of judicial officers for cause.

At present the only effective provision is Section 10a of Article VI which is limited to the removal by the Supreme Court of any judge who has been convicted of a crime involving moral terpitude.

Most persons are also familiar with Section 18 of Article IV which makes certain officers, including justices of the Supreme Court and District Courts of Appeal and judges of the Superior

Courts liable for impeachment by the Legislature for any misdemeanor in office. But an impeachment proceeding before the Legislature is cumbersome. The proceeding has been invoked against judges only three times in the history of the state, and it probably will not be used again except in the most aggravated cases.

Less generally known is Section 10 of Article VI which provides for the removal for cause of justices of the Supreme Court and the District Courts of Appeal and judges of the Superior Courts by a two-thirds vote of the Legislature, and for the removal of all other judicial officers except "justices of the peace" by a vote of the Senate upon recommendation of the Governor. In either case, a complaint must be served upon the judge and a hearing accorded. Since the adoption of this section in 1879 there has been but one instance in which the Legislature undertook to commence action under it, probably because of the lack of an effective procedure for initiating complaints.

COVERS ANY ELECTIVE OFFICIAL

There are also the provisions of Article XXIII setting forth the procedure for a recall by the electorate of any "elective public officer of the state." This procedure has seldom been invoked against judges.

Finally, attention should be called to the procedure in the Judges' Retirement Law for retirement with compensation, with or without the consent of the judge, upon a finding of mental or physical disability of a permanent nature. This procedure has never been used to compel an involuntary retirement.

As you know, the Qualifications Commission, as it now exists, consists of the Chief Justice of the Supreme Court, a Presiding Justice of the District Court of Appeal, and the Attorney General. All appointments by the Governor to fill vacancies on the Supreme Court and the District Courts of Appeal are subject to approval by this commission on qualifications, but the Commission has no power to remove or retire judicial officers.

It is now proposed to enlarge the Commission on Judicial Qualifications to consist of the Chief Justice of the Supreme Court, the Attorney General, two Justices of the District Courts of Appeal, and one judge of the Superior Court, each selected by the Supreme Court for a 4-year term; two members of the State Bar appointed by the Board of Governors for a 4-year term; and two citizens

who are not lawyers or judges, those citizens to be appointed by the Governor for a term of 4 years.

CHIEF JUSTICE GIBSON'S OPINION

It is further proposed by the Judicial Council to amend Article VI of our State Constitution by adding thereto Section 10b relative to the removal of judges. As was said by Chief Justice Gibson in a statement to the Interim Senate Judiciary Committee on November 26, 1956:

"It provides for removal of a judge or justice of any court for certain specified causes such as wilful misconduct in office and mental or physical infirmity interfering with the performance of judicial duties. The procedure calls for a verified complaint, filed with the Commission on Judicial Qualifications, and a hearing before the Commission. If the charges are sustained, the judge may be removed or retired unless the Senate by a majority vote disapproves of the decision. The procedure seems fair and we could scarcely conceive of a more appropriate tribunal to conduct a hearing than the Qualifications Commission. Indeed, we may expect that, as a practical matter, the mere initiation of proceedings before the Commission would often induce voluntary retirement in disability cases and voluntary resignation in misconduct cases.

"The conditions which gave rise to the proposal are well known to both the bench and the bar. And they are not wholly unknown to persons outside the profession. By way of illustration, I might call your attention to the situation which exists in one county which has five inferior courts. Of the five judges, two have been absent continuously from their courts for over six months. One, after being absent for nearly a year, lost his position as the result of the creation of a new municipal court district, and one has been continuously absent for more than a year. All of the judges have drawn full salary while absent. It seems reasonably certain that one of them will never be able to perform his duties, but he continues to draw a full salary.

"This sort of thing is no credit to the bench or the bar, and it tends to undermine all of the public confidence in the legal system that is so laboriously built up by procedural reforms and by the work of the vast majority of conscientious and able judges. We now have no effective remedy for judicial disability or misconduct. And we have reason to believe that the new power, if granted,

will go a long way toward alleviating this disgraceful condition."

I could augment the statement of the Chief Justice by saying that in the county he refers to, four judges have been inordinately absent due to physical disability, and the taxpayers of that county were compelled to pay out some $9,489.00 as compensation and travel expenses for judges assigned to conduct those courts, in addition to over $18,000.00 as regular salaries to the four incapacitated judges.

PROBLEMS WITH JUDGES

Time does not permit me to go into other specific cases, but suffice it to say that there are also other problems involving alcoholism, and even mental disorder, including the case where the judge was practically unable to remember from one day to the next what had transpired in a trial.

This proposal is not aimed at compulsory retirement of the judges at a particular age. It is not a problem of age, because some judges are able and fully qualified mentally and physically at 75 years of age while others may be incapacitated at 50 years.

Limited time, as I say, does not permit further specific instances, but I am authorized by the Chief Justice to say that any one of you are at liberty to talk with him whose duty it is as Chairman of the Judicial Council to assign judges to replace those judges incapacitated for lengthy periods for active duty, and from him to learn the imperative need for authority to be conferred upon the judiciary itself through its Qualifications Commission, to supplant the present antiquated and cumber$ome provisions of our Constitution concerning the removal or retirement of judges.

That the Judicial Council proposal is neither revolutionary or without precedent is attested by the fact that Chief Justice Arthur T. Vanderbilt, in his work on Minimum Standards of Judicial Administration (1949), at page 22, points out that already six states (Louisiana, Maryland, New Jersey, New York, Ohio and Texas) have adopted a method, other than impeachment or recall, for the discipline of judges by some existent or specially convened tribunal.

If you are interested in a type of situation with which the courts are now apparently powerless to cope, read the case of Etzel v. Rosenbloom, 83 Cal. App. 2d 758. In other words, there are no present provisions for reprimand of judges by any body with power.

It may be argued that such a procedure would place a judge at the mercy of "crackpot complaints" and the resentment of disappointed litigants. That such a result will not ensue is assured by the fact that the Commission on Qualifications will have a staff for investigatory purposes—that complaints do not become public until after preliminary investigation. The proposed amendment provides only that a complaint *may* be lodged with the Commission. A hearing does not follow until, after investigation, the Commission authorizes a filing of the complaint. Surely, some trust could reasonably be placed in the Commission of the type proposed to act with integrity and honor, as well as with fairness and impartiality to the judge in question.

In conclusion, I submit that judges should be subject to disciplinary action, and that some better method than the law now affords must be devised to compel the retirement or removal of a judge for cause, and that if such a method were granted, the proposed personnel of the Commission insures that it will be used with both courage and discretion.

THE PRESIDENT'S PAGE

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tion to the traditions of the Association. Our thanks and appreciation likewise extend to the retiring Trustees who so sincerely and energetically were a part of the team. It is this type of leadership and belief in the upbuilding of our profession over the years that has brought the Los Angeles Bar Association along to its present position as the third largest local bar association in the country, an association of ever growing prestige and nationwide reputation.

It will be my earnest endeavor to continue the work of the Association and expand its activities wherever indicated and feasible. There is much to be done in and by means of our County-wide organization for the good of the bar and of the community. I solicit your help and your suggestions. It means a great deal to have had the many requests received for service on committees, and to otherwise assist in the activities of the Association. Every one who wishes to help will be assigned to a committee or to a special task; the call will not go unheeded.

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NATIONAL TRUST AND SAVINGS ASSOCIATION
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TAX REMINDER:

Shareholder's Guaranty of Loans to Corporations

By ARTHUR MANELLA*

Arthur Manella

A LOSS incurred by a shareholder upon the worthlessness of a loan made by him to his corporation is generally held to arise from a "non-business" debt and is therefore deductible only as a short term capital loss. The Supreme Court has recently refused to accord different tax consequences to a loss suffered by a shareholder who guaranteed loans made to his corporation by a third party, instead of making the loans to his corporation directly. (*Putnam v. Commissioner of Internal Revenue*, 77 Sup. Ct. 175, December 3, 1956.)

The Court ruled that under the doctrine of subrogation, payment by the guarantor merely resulted in his acquiring the original "debt" which "becomes" worthless in his hands at that instant. The Court rejected the view taken by three Courts of Appeal that an ordinary loss (rather than a worthless debt loss) resulted when the shareholder made good on his guaranty, since the "debt" he was thereby subrogated to was worthless even before it was acquired.

The actual holding of the *Putnam* case was not unexpected. The general reasoning of the opinion is a cause of concern, however. The Court reasoned that it would result in a "fairer reflection" of taxable income to treat the guaranty losses in the same way as other non-business losses such as those on a worthless stock investment or a worthless loan. The Court stated that "There is no

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Author of various articles on Federal Taxation.

real or economic difference between the loss of an investment made in the form of a direct loan to a corporation and one made indirectly in the form of a guaranteed bank loan. The tax consequences should . . . be the same. . . ."

If this "fairer reflection" of taxable income reasoning were to be applied in other tax areas concerning the capital structure of closely held corporations, some unexpected and detrimental tax consequences could ensue. For example, if applied to the "thin incorporation" problem, payment of interest on, or repayment of, loans made to a corporation by a bank but guaranteed by a shareholder, might result in taxable "dividends" to the shareholder on the theory that the guaranteed bank "loan" represents an equity investment.

Controversy Over Whether Probation Committee Should Be Virtually Stripped of Power

[On July 10, 1956, the Board of Supervisors of Los Angeles County voted 4 to 1 to instruct the County Counsel to prepare an amendment to the Welfare and Institutions Code, Sec. 662, for submission to the 1957 Legislature, to transfer management and control of the Los Angeles County Juvenile Hall from the Probation Committee to the County Probation Officer.

The Board of Trustees of the Los Angeles Bar Ass'n on Dec. 11, 1956, unanimously voted to request that the Bar Ass'n be given an opportunity to have a representative appear before the Board of Supervisors to state the reasons why this action should be postponed until further study could be given to the desirability of such proposed change in the administration of Juvenile Hall.

The following interim report was rendered by the Juvenile Court Committee of the Los Angeles Bar Ass'n. Eleven members of that committee approved the committee's recommendation; 2 voted against it. Highlights of the majority and minority reports are given below.

The Board of Trustees of the Bar Ass'n unanimously approved the majority report given in part hereinafter.]

Pursuant to California Welfare and Institutions Code, Section 662, the management and control of the internal affairs of Juvenile Hall has, since approximately 1903, been exercised by the Los Angeles Probation Committee. The Probation Committee is composed of nine citizens who serve without compensation, and are apppointed by the members of the Board of Supervisors to serve staggered terms on the Committee. (The term "Probation Committee" is somewhat misleading—a better title would be "Juvenile Hall Commission.")

The Board of Supervisors voted to instruct the County Counsel to prepare the suggested amendment to the Welfare and Institutions Code, Section 662, provided the Probation Committee was

unwilling voluntarily to cede its jurisdiction to the Probation Officer.

The Probation Committee, by a unanimous vote, determined not to cede its jurisdiction to the Probation Officer.

RECOMMENDATION OF THE BAR ASS'N COMMITTEE MAJORITY

Your committee recommends that the Board of Trustees adopt a resolution substantially as follows, and that said resolution be communicated to the Board of Supervisors of the County of Los Angeles:

> RESOLVED, that the Board of Trustees of the Los Angeles Bar Association respectfully recommends that the Honorable Board of Supervisors of the County of Los Angeles postpone submission of proposed legislation amending Section 662 of the California Welfare and Institutions Code (which proposed legislation would shift the management and control of the internal affairs of the Los Angeles County Juvenile Hall from the Los Angeles County Probation Committee to the Los Angeles County Probation Officer) pending a further study of, and consideration of the merits of, such proposed change in the administration of Juvenile Hall. [This Resolution adopted Dec. 11, 1956, by the Board of Trustees of the Bar Assn.]

REASONS FOR COMMITTEE'S RECOMMENDATION

(a) There are apparent and significant differences of opinion between the County Probation Officer and the Probation Committee as to policy matters in the administration of Juvenile Hall. Your committee is convinced as a result of its study that these differences and the merits of the respective positions have not been adequately considered by the Grand Jury and the Board of Supervisors.

The 1956 Grand Jury afforded no opportunity to the Probation Committee or to the Superintendent of Juvenile Hall to present their views on the merits of the question, either at a hearing or otherwise. The report and recommendation of the Grand Jury to the Board of Supervisors did not touch upon these basic differences. Since these basic differences are most significant, your committee feels strongly that they should be given careful consideration either by the Board of Supervisors or by a special study committee

appointed by the Board, before steps are taken to implement the Board's decision of July 10, 1956.

(b) The recommendation of the Grand Jury to the Board of Supervisors to transfer management of the Juvenile Hall from the Probation Committee to the Probation Officer was based primarily on the proposition that single line responsibility held by a professional administrator is preferable from the standpoint of the principles of political science to administration by a citizens' board. Your committee, on the other hand, attaches importance to the value of utilizing a citizens' board composed of public spirited men and women possessed of actual rather than merely advisory powers in an area of county government such as the administration of Juvenile Hall. Your committee feels that this is an area in which the need for participation by citizens in their government is particularly acute, and in which, by contrast, control by a professional bureaucracy has significant disadvantages in the long run.

(c) The Los Angeles County Probation Committee appears to your committee to have functioned well in practice. There is a complete absence of criticism from any sources known to your committee respecting the members of the Probation Committee. The resolution of the 1956 Grand Jury refers to the Probation Committee as composed of "exceptionally able men and women."

Some years ago a psychiatric clinic was established at Juvenile Hall under the auspices of the Probation Committee. Your committee is advised that very few juvenile halls in the United States have such a clinic, and that there is no juvenile hall in California which has undertaken a program such as that in effect in Los Angeles County.

In 1954 an attractive chapel for religious worship was constructed on the grounds of Juvenile Hall. This chapel is extensively used according to information received by your committee, and has received high praise.

PROBATION COMMITTEE'S BUILDING IS BETTER

Subsequently, during construction of the new Juvenile Hall facilities (which were mainly completed in 1954), the Probation Committee and the staff of Juvenile Hall were vigilant in insisting upon the correction of numerous errors and omissions in the architectural plans which, if not corrected, would have seriously impaired the functioning of the new facilities. YOUR COMMITTEE CANNOT HELP CONTRASTING THE NEW

JUVENILE HALL BUILDINGS WITH THE SEPARATE BUILDINGS HOUSING THE JUVENILE COURT WHICH WERE CONSTRUCTED AT THE SAME TIME AND WHICH ARE SERIOUSLY DEFECTIVE IN MANY RESPECTS!*

Other examples could be given to illustrate the value to the County of an administrative board of public spirited citizens not subject to the constraints and limitations which might operate on a County department to discourage or prevent that department from taking important issues on occasion directly to the Board of Supervisors. In the view of your committee, the accomplishments outlined above might very well not have occurred had Juvenile Hall not been under the administration of the Probation Committee during the years in question.

Your committee is doubtful if the interest or value of the members of the Probation Committee could be sustained if the administrative functions of that Committee were removed and the Probation Committee placed in a purely advisory capacity without facilities, staff or powers of any kind. Since the Probation Committee has a fine record of accomplishment and is apparently functioning satisfactorily at the present time, it would appear to be bad public policy to place in effect a change eliminating the Committee's present functions. Such elimination is likely, in the eyes of your committee, to react to the detriment of the public by discouraging and deterring citizens from participation in non-political areas of government.

(d) Your committee is aware of the important fact that on several occasions in past years the Los Angeles County Grand Jury has recommended to the County Board of Supervisors that the administration of Juvenile Hall be shifted from the Probation Committee to the Probation Department. Specifically, such recommendations were submitted in 1944, 1947, 1948, 1954, 1955 and 1956. These recommendations were not acted upon by the Board of Supervisors except in 1944, 1948 and 1956. In 1944 the Board of Supervisors submitted to the voters of Los Angeles County a proposed County Charter Amendment No. 4,** which would have transferred the administration of Juvenile Hall from the Probation Committee to the Probation Department and placed the Probation

*Editor's Note: emphasis added.
**[Editor's Note: "No. 4" seems to be an unlucky number for proposed constitutional or charter amendments.]

Committee in an advisory capacity. The measure required a favorable two-thirds majority to pass; however, approximately 64% of the votes cast were against the proposal. Again in 1948, substantially the same measure was submitted to the voters as County Charter Proposition C. Again the measure was defeated (45% "yes;" 55% "no"). It is of some significance that on the only occasions when the electorate has had an opportunity to pass on this question, the proposed change has been rejected.

(e) In the opinion of your committee, heightened public concern regarding the treatment of juvenile offenders is more likely to be assured under present arrangements. With the Probation Committee and the Probation Department both continuing to exercise their respective functions in the field of juvenile detention, placement and probation, your committee believes there will be less likelihood either of public disinterest or of apathetic administration.

PROBATION OFFICER PRAISED

(f) Your committee wishes to record its high regard and admiration for the present County Probation Officer. However, the County Probation Department appears to your committee to be overly burdened by its present duties and functions, which are vitally important. The Probation Department is responsible for control and administration of the County Forestry Camps for juvenile offenders. During the past several years there have been extraordinary and serious delays in the program for construction of these camps. The result has been that children assigned to these camps by the Juvenile Court must remain at Juvenile Hall or in other temporary custody for periods now averaging one to two months before a camp opening occurs. This is one important cause of the overcrowded situation at Juvenile Hall—a cause over which the Probation Committee has no control. Your committee believes that this serious situation is now in the process of being remedied. However, the problem of adequate and speedy construction of the forestry camps and the problem of finding other adequate permanent placement facilities appear to your committee to be of substantially greater importance at the present time than the problem of the administration of the internal affairs of Juvenile Hall.

(g) Your committee believes that insufficient effort has been

made to foster coordination of policy and programs between the Probation Department and the Probation Committee and that a great deal could be accomplished in this connection while retaining the advantages to the community at large of a citizens' board in the administration of Juvenile Hall.

(h) Your committee recognizes that there are several excellent arguments in support of the position that the administration of Juvenile Hall should shift to the Probation Department. In particular, your committee places great weight on the expressed opinion of the two judges of the Juvenile Court, whom it believes are doing a magnificent job in administering and, in many respects, improving juvenile justice in this County. It should be observed, however, that Judge William B. McKesson, presiding judge of the Juvenile Court until 1955, who served some seven years as Juvenile Court Judge, has advised that he strongly opposes shifting the administration of Juvenile Hall to the Probation Department.

In particular, your committee believes that a further study of the problem should be made before any final decision is taken to eliminate the jurisdiction of the Probation Committee. Such a study might explore the matter of achieving greater cooperation between the Probation Department and the Probation Committee, while preserving to the community the great value of a vigilant body of public spirited citizens exercising a significant function in this vital area of government.

STATEMENT BY TWO COMMITTEE MEMBERS OPPOSED TO THE COMMITTEE'S RECOMMENDATION

The administration of Juvenile Hall is only a part of the overall complex "juvenile problem" in Los Angeles County. The Probation Committee as it is presently constituted in this County is restricted to administrative and housekeeping activities at Juvenile Hall.

County juvenile facilities consist of Juvenile Hall, Senior and Junior Forestry Camps, Biscailuz Center which operates as an overflow for the Hall and staging area for the Camps, and El Retiro School for Girls. All of these facilities, with the exception of Juvenile Hall, are now operated by the Probation Department.

The action of the Board of Supervisors on July 10, 1956 to amend Section 662 of the Welfare and Institutions Code will bring Los Angeles County into a greater degree of harmony with pre-

vailing practice in California where all but four of the Counties have placed the operation of Juvenile Hall under the Probation Officer.

If the action of the Board of Supervisors results in the favorable passage of this amendment, it will convert the responsibility of the Probation Committee from an administrative housekeeping job restricted to Juvenile Hall to a general advisory capacity in relation to the entire field of juvenile probation and Juvenile Court operation.

In this new role, the Probation Committee can meet an important and unfilled need that has existed for many years for a group of independent citizens who are not restricted by bureaucratic protocol to act as advisor and watchdog in administering and developing a probation department and Juvenile Court program which can correct some of the existing major problems.

The action of the Board of Supervisors has been recommended for many years by the Grand Jury, it is supported by the Judges of the Juvenile Court, by the Probation Officer and the Chief Administrative Officer. While the favoring of this change by the Probation Officer and the Chief Administrative Officer may not be persuasive, the support of the Judges and the Grand Jury is as they have nothing to gain or lose by the change.

One of the criticims voiced before the Juvenile Court Committee of the present operation of Juvenile Hall is the undue emphasis on detention and security and the minimizing of the overall training and counseling activity of the juveniles who are detained. While it is understandable that during a temporary detention phase, such training and counseling programs may be difficult to operate, it is believed that by placing the control of Juvenile Hall in the Probation Department, there will be a greater possibility of getting away from the present emphasis on detention and integrating the program of Juvenile Hall into the rehabilitation programs operated in the other facilities under the control of the Probation Department. This is an important consideration as it is not uncommon that a child will remain in Juvenile Hall several months while efforts are made to arrange a suitable placement and program.

A unified control of juvenile facilities will also help to overcome some of the serious personnel problems at Juvenile Hall caused by excessive personnel turnover which in turn is caused by the emphasis on security rather than counseling activity, and will

allow the Probation Department to use Juvenile Hall to a greater extent in its staff training program.

The pattern of the Juvenile Court and Probation Department has been that of rapid decentralization in an effort to bring the service in the juvenile field into the local areas of the County. With the growth of the County, the creation of a large branch Juvenile Hall at Downey and the possibility that a number of smaller branches dispersed throughout the County might be necessary or desirable, the question of whether the Probation Committee is really able to carry out this type of branch development as efficiently as the Probation Department which already operates on a decentralized basis is presented. At the present time, the Juvenile Court determines upon recommendation of the Probation Officer, when a child will be detained, when released, what program will be made for the child, and a host of other decisions effecting the life of the child. The role of Juvenile Hall is restricted to providing proper care and housekeeping during the time the child is detained in the hall and providing housing for the Psychiatric Clinic which also might advantageously be placed under the Probation Department. It would appear that the Probation Department with its operation of branch offices and other institutional facilities might be in a better position to experiment with other forms of detention such as smaller local units.

GRAND JURY SHOULD HAVE CONSULTED PROBATION COMMITTEE

The undersigned are in agreement with the majority members of the Committee that the Grand Jury should have consulted with the Probation Committee before making its recommendation this year. It is understandable that a Committee of the calibre of persons now serving on the Probation Committee would be entitled to more courteous treatment and an opportunity for a hearing before their function was recommended for change.

However, in the overall view of the conditions which exist, it is believed that the proposed change of function in which the Probation Committee is converted from management of one part of a complex juvenile program to a general advisory role in which they should have an opportunity to make recommendations which will have a greater effect in improving the juvenile program on a broader base is desirable and should not be delayed by the Juvenile Court Committee of the Los Angeles Bar Association.

After-Hour Bail-Fixing Judge Asked by Criminal Committee; Approved by Board

The Committee on Criminal Law and Procedure of the Los Angeles Bar Association, according to an interim report by its chairman, Harry P. Amstutz, has advocated the desirability of having judges available at all times to sign writs of Habeas Corpus and other related matters.

The basis of the complaint is that attorneys practicing criminal law have found it difficult and in some cases impossible to secure the services of a judge after court hours on week days, and on weekends and holidays for the issuance of writs of Habeas Corpus, fixing and accepting bail on same, and signing releases for prisoners upon the posting of bail.

This Committee held hearings in this regard, at one of which was present the Honorable Herbert Walker, Presiding Judge of the criminal departments of the Superior Court. As a member of said criminal court, Judge Walker gave the Committee the attitude of some of the judges in reference thereto. He also stated that a committee of judges of the Superior Court is considering this same proposition.

As a result of the foregoing investigation by this Committee, it recommended that the judges of the Superior Court designate a judge thereof to be available after court hours on week days, on Saturdays and Sundays, and on holidays, for the purpose of fixing bail and signing the necessary releases of prisoners upon the posting of such bail, and in connection with the issuance of writs of Habeas Corpus.

After a full discussion it was further recommended by this Committee that the judges of the Superior Court seriously consider the desirability and feasibility of securing the services of a Court Commissioner for the criminal courts, to be stationed at an appropriate location after court hours, on Saturdays, Sundays and holidays, to fix bail, accept bail, sign the necessary releases for

prisoners in custody, and attend to any other matters which would be jurisdictional and proper for such Commissioner to act upon as the court may deem proper. These recommendations were uanimously adopted by your Committee.

AMENDMENT OF RULE 31 ON THE RULES ON APPEAL

With further reference to the matter of amending Rule 31 of the Rules of Appeal it was recommended by this Committee as follows:

That Rule 31 of the Rules on Appeal be amended to add a proviso to the effect that the appropriate reviewing court shall have the right to permit the filing of a written notice of appeal in criminal cases wihin sixty days after the rendition of the judgment or the making of the order, upon a finding by such reviewing court within said sixty-day period, that the failure to file written notice of appeal within the ten-day period was due to mistake, inadvertence, surprise or excusable neglect.

Further that Rule 31 contain a further provision that in the event a written notice of appeal is received by a clerk of the Superior Court after the expiration of the ten-day period, said clerk shall mark the same "Received (insert date) but not filed," place the same in file and forthwith advise the appealing party that the same has not been filed.

BOARD OF TRUSTEES APPROVES

President Frank P. Gray presented to the Board of Trustees of the Los Angeles Bar Ass'n, the foregoing interim report: It was voted that the Committee's recommendation that the judges of the Superior Court be requested to designate a judge to be available after court hours on week days and on Saturdays, Sundays and holidays, for the purpose of fixing bail and signing writs, be approved and that a request be made to have the judge available at an appropriate place in the civic center.

It was voted that no action be taken on that portion of the Committee's report concerning securing the services of a Court Commissioner after court hours, and so forth. It was voted that the Committee's recommendations to amend Rule 31 of the Rules of Appeal be approved and that this matter be forwarded to the Judicial Council of the State of California for appropriate action.

Opinion of Committee on Legal Ethics Los Angeles Bar Association

OPINION NO. 237

CONFLICTING INTERESTS. In the absence of a showing of a conflict of interest it is not unethical for a lawyer who represents an Administratrix to also represent her in her individual capacity as an heir in a contest with another person claiming distribution of the estate. (Distinguishing Opinion No. 193.)

A lawyer requests the Committee's opinion on the following question:

> A lawyer represents the administratrix of an estate who is a sister and heir of the decedent. A niece of the decedent's previously deceased spouse brought proceedings to have the estate distributed to her under Probate Code Section 229, claiming that the estate had been the separate property of the decedent's previously deceased spouse. The administratrix has requested the lawyer to represent her and other heirs in contesting the niece's claim for distribution of the estate to the niece.
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> The questions are:
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> (1) May the lawyer ethically represent the administratrix and the other heirs in their individual capacities against the niece, and
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> (2) If so, may the lawyer ethically bill such heirs for services rendered to them as heirs?

In our opinion, under the facts stated, the lawyer may ethically represent the administratrix in her individual capacity, as well as the other heirs, in the contest with the niece. In Opinion No. 144 (1943) this Committee so ruled, under the same essential facts, on the ground that a lawyer in such a position would not be representing adverse or conflicting interests. As pointed out in that opinion, there are no adverse claims between the administratrix as such and the heirs, the contest being between the administratrix in her individual capacity as an heir and the niece of the predeceased spouse on the question of distribution of the estate property. The administratrix, as such, has no interest in the outcome of such

a contest, but she does have the right in her individual capacity as an heir to contest the niece's claim. Since the position of the administratrix in her individual capacity as an heir is not adverse to her position as administratrix, the lawyer for the administratrix would not be representing adverse or conflicting interests in accepting employment from the administratrix and the other heirs, in their individual capacities, in resisting the niece's claims, and therefore the second paragraph of American Bar Association Canon 6, prohibiting the representation of conflicting interests, does not apply.

In Los Angeles Bar Association Opinion No. 193 (1952) we held that it would be unethical for a lawyer to represent an administratrix of an estate in her capacity as an heir in an heirship contest with the step-children of the decedent, where the lawyer, while representing the administratrix in that capacity, had obtained certain documents and information from the step-children which were material to the contest. The basis of that Opinion was that the lawyer would be presumed to have been acting impartially while acting for the administratrix in her representative capacity and to have received the documents and information in such capacity. While perhaps this conduct would not technically be a violation of the third paragraph of American Bar Association Canon 6 or of American Bar Association Canon 37, prohibiting a lawyer from disclosing or using against a client or former client confidential information gained during his employment, it would be unfair and dishonorable within the meaning of American Bar Association Canon 22 and therefore unethical if the lawyer were to represent the administratrix in such a contest.

Under the facts stated in the inquiry now before us, there is no indication that the lawer had gained any information from the niece while acting for the administratrix and we assume that he had not.

We feel that question (2) involves a question of law alone rather than ethics and therefore, following our practice of not answering questions of law, we refrain from pursuing that matter.

This opinion, like all opinions of this Committee, is advisory only. (By-Laws, Art. X, Sec. 3)

Brothers-In-Law

By George Harnagel, Jr.

George Harnagel, Jr.

After many months of study and preparation the State Bar of **Michigan**, through its Committee on Public Relations, has launched a major project in the field of preventive law called "the Annual Legal Check-Up."

Through a state-wide advertising campaign by local bar associations, using materials prepared by the Committee, members of the public are being urged to avoid trouble by having a periodic check-up of their business and personal affairs by a lawyer. The plan also contemplates that members of the bar will suggest such a procedure to their clients where the attorney-client relationship is such that this will not amount to an improper solicitation of business. Worksheet booklets, calling for data on a client's affairs under 100 separate headings, have been prepared for use by lawyers making the check-ups.

Publicity for this campaign cites the familiar parallel of the periodic medical check-up.

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The Supreme Court of **Illinois** has appointed a special commissioner to consider "questions that have arisen as to the practices of the Brotherhood of Railroad Trainmen and similar organizations in employing lawyers to render service to their members in personal injury cases, and the practices of individual lawyers in connection with those cases. . . . ." The Illinois State Bar Association and The Chicago Bar Association both have filed appearances in the hearings, which involve alleged solicitation of clients through union agents in injury cases. By action of the House of Delegates at the annual meeting in Dallas, the American Bar Association is filing a brief in the matter.

* * *

The Appellate Division, First Department, of the Supreme

Court of **New York** has put into effect a rule which limits contingent fees in negligence actions, except under "extraordinary circumstances," to a fixed schedule. The schedule allows 50% on the first $1,000.00 recovered, 40% on the next $2,000.00, 35% on the next $22,000, 20% on the next $25,000, and 15% on any amount over $50,000 of the sum recovered.

The rule provides that these percentages shall be computed on the gross sum recovered, less all taxable costs and disbursements. It also provides that "expense for legal, medical, investigative or other services rendered in investigating, preparing or prosecuting" a claim or action shall be charged against the attorney's compensation.

The reaction of the New York bar, to put it mildly, is not universally enthusiastic.

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The Association of the Bar of the City of New York plans to field a team of six lawn tennis players against a team drawn from the ranks of the Bar Lawn Tennis Society of London. This international contest is scheduled for Wimbledon during the London meeting of the ABA.

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A movement for comprehensive reorganization and modernization of the judicial system of **Florida,** sponsored by the Judicial Council of that state, has come to partial fruition with the adoption by the voters of a constitutional amendment embodying a portion of the Council's recommendations.

Chief result of the amendment is the establishment of three District Courts of Appeal to ease the burden on the Supreme Court of Florida, which in 1954 had a case load of 1,251 as against a national average of 332.

Silver Memories

Compiled from the World Almanac and the L.A. Daily Journal of February, 1932, by A. Stevens Halsted, Jr.

A. Stevens Halsted, Jr.

The first world conference on disarmament opened at Geneva. **Arthur Henderson** served as chairman of the 232 delegates representing nearly 60 nations.

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The U.S. Circuit Court of Appeals at San Francisco has cancelled the $12,000,000 Kern County Naval Oil Reserve leases to the Pan-American Petroleum Co., an **Edward L. Doheny** concern.

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The Third Olympic Winter Games have been officially opened at Lake Placid, New York, by Gov. **Franklin D. Roosevelt.**

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The New York Stock Exchange, urged forward by President **Hoover**, has made a thrust at short selling by announcing that, beginning April first, its member firms will be required to obtain the express consent of customers before their stock can be lent to protect commitments on the down side of the market. **Richard Whitney**, president of the Exchange, testified before the House Judiciary Committee in Washington that short selling is essential to the maintenance of stock exchanges.

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Brazil bought and burned or dumped in the ocean 2,500,000 bags of coffee; 10,500,000 bags remain to be destroyed, to boost the price of coffee.

Postmaster General **Walter G. Brown,** after a conference at the White House, announced that President **Hoover** will be a candidate for re-nomination. The North Dakota Democratic State Convention endorsed Gov. **Franklin D. Roosevelt** of New York for the presidency.

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Adolf Hitler has become a German citizen through his appointment to the post of Attache at the Berlin Legation of the State of Brunswick.

BULLETIN TO BE FURNISHED SENIOR LAW STUDENTS

It was unanimously voted at a recent meeting of the Board of Trustees of the Los Angeles Bar Ass'n, "that the LOS ANGELES BAR BULLETIN be forwarded to the current senior law-students of the following universities without charge:

University of Southern California

Loyola University

University of California at Los Angeles."

Note by Bulletin Committee: We bow.